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Dated: January 22, 2007

Signature:

(Rabiya S. Kader)

1/24 3733
Docket No.: OSTEONICS 3.0-414 III
(PATENT)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:
Axelson et al.

Application No.: 09/811,042

Group Art Unit: 3733

Filed: March 17, 2001

Examiner: A. R. Reimers

For: SYSTEMS USED IN PERFORMING
FEMORAL AND TIBIAL RESECTION IN
KNEE SURGERY

RESPONSE TO RESTRICTION REQUIREMENT

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir or Madam:

This communication is in response to the Office Action mailed October 20, 2006, setting forth a Restriction Requirement in the above-identified application. A petition for a two-month extension of the term for response to said Office Action, to and including January 20, 2007, is transmitted herewith.

In the Office Action, the Examiner required restriction to one of the following inventions under 35 U.S.C. § 121:

- I. Claims 1-42 and 74-81, drawn to a system; and
- II. Claims 43-73, drawn to a system.

In response, Applicants hereby provisionally elect, with traverse, the invention of Group II, corresponding to claims 43-73. Applicants reserve the right to file a divisional application corresponding to the non-elected claims.

Applicants respectfully argue that the restriction requirement be withdrawn. Pursuant to M.P.E.P. § 808.02, the Examiner "must explain why there would be a serious burden on the examiner if restriction is not required." Previously, all 81 claims had been examined on the merits and, in fact, claims 1-42 were allowed, as evidenced by the Office Action dated October 27, 2004. Thus, it cannot be shown that a serious burden exists as the claims have already been examined on the merits.

Further, this application was inadvertently deemed abandoned by the U.S. Patent and Trademark Office on May 3, 2005. However, a Letter Rescinding Notice Of Abandonment was sent June 16, 2005, acknowledging that a proper response with the appropriate fees for extensions of time was received in the Office on May 2, 2005. Thus, it is now unreasonable and an unfair burden on the Applicants to issue a restriction requirement eighteen months after the last response to an Office Action was filed. Institution of this restriction requirement will extend the prosecution of this case by another year or two and shortens the term of any patent issuing from this application. Thus, this restriction requirement places an undue burden on the Applicants.

Lastly, applicants thank the Examiner for the conversation she had with Applicants' representative on January 18, 2007, regarding the withdrawal of the restriction requirement. The Examiner suggested that Applicants elect with traverse and noted that the claims had been previously examined by Examiner Michael Priddy, who had since left the office but had recently returned. In his absence, Examiner Reimers had been assigned the case and issued the restriction requirement. As such, Applicants respectfully request that the case be returned to Examiner Priddy as he is familiar with the application and the burden, if any, on Examiner Reimers to

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examine this case anew would be removed. Thus, withdrawal of the restriction requirement is requested.

If there are any additional charges in connection with this requested amendment, the Examiner is authorized to charge Deposit Account No. 12-1095 therefor.

Dated: January 22, 2007

Respectfully submitted,

By 

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